

§ 2779a. Prohibition on incentive payments**(a) In general**

No United States supplier of defense articles or services sold or licensed under this chapter or exported pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Civil penalties

Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) Presidential authority

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 [50 U.S.C. 4610(c), (d), (e), (f)], and section 12(a) of such Act [50 U.S.C. 4614(a)], subject to the same terms and conditions as are applicable to such powers under that Act [50 U.S.C. 4601 et seq.], except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) Definitions

For purposes of this section—

(1) the term “offset agreement” means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term “incentive payments” means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term “United States person” means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

(ii) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (i).

(Pub. L. 90-629, ch. 3, §39A, as added Pub. L. 103-236, title VII, §733, Apr. 30, 1994, 108 Stat. 504; amended Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1246, title XIII, §1303], Nov. 29, 1999, 113 Stat. 1536, 1501A-502, 1501A-511; Pub. L. 111-266, title I, §103(d), Oct. 8, 2010, 124 Stat. 2799.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to chapter 56 (§4601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-266 inserted “or exported pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title” after “under this chapter”.

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(7) [title XII, §1246(a)], inserted “or licensed” after “sold” and “or export” after “sale”.

Subsec. (c). Pub. L. 106-113, §1000(a)(7) [title XIII, §1303], inserted “section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that” after “except that”.

Subsec. (d)(3)(B)(ii). Pub. L. 106-113, §1000(a)(7) [title XII, §1246(b)], inserted “or by an entity described in clause (i)” after “subparagraph (A)”.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title.

§ 2780. Transactions with countries supporting acts of international terrorism**(a) Prohibited transactions by United States Government**

The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such trans-

action which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 2753(a) of this title, under section 505(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)], under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 2778 of this title for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1),

the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) Prohibited transactions by United States persons

(1) In general

A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) Liability for actions of foreign subsidiaries, etc.

A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

(3) Applicability to actions outside the United States

Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3)(A) or (B). To the extent provided in regulations issued under subsection (1)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) Transfers to governments and persons covered

This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d) Countries covered by prohibition

The prohibitions contained in this section apply with respect to a country if the Secretary

of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.

(e) Publication of determinations

Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

(f) Rescission

(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)(A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: “That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited.”, the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the

Committee on Foreign Relations of the Senate, respectively.

(g) Waiver

The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) Exemption for transactions subject to National Security Act reporting requirements

The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 ([50 U.S.C. 3091 et seq.]; relating to congressional oversight of intelligence activities).

(i) Relation to other laws

(1) In general

With regard to munitions items controlled pursuant to this chapter, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) Section 614(a) waiver authority

If the authority of section 614(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2364(a)] is

used to permit a transaction under that Act [22 U.S.C. 2151 et seq.] or this chapter which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) Criminal penalty

Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 20 years, or both.

(k) Civil penalties; enforcement

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 [50 U.S.C. 4610(c), (e), (g), 4614(a)] (subject to the same terms and conditions as are applicable to such powers under that Act [50 U.S.C. 4601 et seq.]), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) Definitions

As used in this section—

(1) the term “munitions item” means any item enumerated on the United States Munitions list¹ (without regard to whether the item is imported into or exported from the United States);

(2) the term “United States”, when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

(3) the term “United States person” means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person’s actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States,

with respect to that person’s actions while outside the United States;

(4) the term “nuclear explosive device” has the meaning given that term in section 6305(4) of this title; and

(5) the term “unsafeguarded special nuclear material” has the meaning given that term in section 6305(8) of this title.

(Pub. L. 90–629, ch. 3, § 40, as added Pub. L. 99–399, title V, § 509(a), Aug. 27, 1986, 100 Stat. 874; amended Pub. L. 101–222, § 2(a), Dec. 12, 1989, 103 Stat. 1892; Pub. L. 102–138, title III, § 321, Oct. 28, 1991, 105 Stat. 710; Pub. L. 103–236, title VIII, § 822(a)(2), Apr. 30, 1994, 108 Stat. 511; Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XIII, § 1303], Nov. 29, 1999, 113 Stat. 1536, 1501A–511; Pub. L. 107–228, div. B, title XII, § 1204, Sept. 30, 2002, 116 Stat. 1427; Pub. L. 111–195, title I, § 107(a)(3), July 1, 2010, 124 Stat. 1337; Pub. L. 113–276, title II, § 208(a)(1), Dec. 18, 2014, 128 Stat. 2992.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (i)(1), and (k), was in the original “this Act”, and this chapter, referred to in subsec. (i)(2), was in the original “the Arms Export Control Act”, both of which mean Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1321, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1), (2) and (i)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 40(d) of the Arms Export Control Act, referred to in subsec. (f)(2)(A), is classified to subsec. (d) of this section.

Paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), referred to in subsec. (f)(2)(B), is Pub. L. 98–473, title I, § 101(h) [title VIII, § 8066(c)(3)–(7)], Oct. 12, 1984, 98 Stat. 1904, 1936, 1937, which is not classified to the Code.

The National Security Act of 1947, referred to in subsec. (h), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§ 401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§ 3001 et seq.) of Title 50. Title V of the Act is now classified generally to subchapter III (§ 3091 et seq.) of chapter 44 of Title 50. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1979, referred to in subsec. (k), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to chapter 56 (§ 4601 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsecs. (f)(1), (g)(2)(B). Pub. L. 113–276 substituted “the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and” for “the Speaker of the House of Representatives and” in introductory provisions.

2010—Subsec. (j). Pub. L. 111–195 substituted “20 years” for “10 years”.

2002—Subsec. (d). Pub. L. 107–228 substituted “groups,” for “groups or” in second sentence and inserted before period at end “, or willfully aid or abet the efforts of an individual or group to use, develop,

¹ So in original. Probably should be capitalized.

produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons”.

1999—Subsec. (k). Pub. L. 106-113 inserted “section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that” after “except that”.

1994—Subsec. (d). Pub. L. 103-236, § 822(a)(2)(A), inserted at end “For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.”

Subsec. (l). Pub. L. 103-236, § 822(a)(2)(B), amended subsec. (l) by striking “and” after the semicolon in par. (2), substituting a semicolon for the period at the end of par. (3), and adding pars. (4) and (5).

1991—Subsec. (f). Pub. L. 102-138, § 321, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A) and former subpars. (A) to (C) as cls. (i) to (iii), respectively, redesignated former par. (2) as subpar. (B) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2). So much of Pub. L. 102-138, § 321(1), as directed that subpar. (C) of former par. (2) be redesignated cl. (iii) of par. (1)(B), could not be executed because no such subpar. (C) had been enacted.

1989—Pub. L. 101-222 substituted “Transactions with” for “Exports to” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) PROHIBITION.—Except as provided in subsection (b) of this section, items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

“(b) WAIVER.—The President may waive the prohibition contained in subsection (a) of this section in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-236, set out as an Effective Date note under section 6301 of this title.

§ 2781. Transactions with countries not fully cooperating with United States antiterrorism efforts

(a) Prohibited transactions

No defense article or defense service may be sold or licensed for export under this chapter in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) Waiver

The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

(Pub. L. 90-629, ch. 3, § 40A, as added Pub. L. 104-132, title III, § 330, Apr. 24, 1996, 110 Stat. 1258.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

CODIFICATION

Another section 40A of Pub. L. 90-629 is classified to section 2785 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, see section 1(q) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

SUBCHAPTER III—A—END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES

§ 2785. End-use monitoring of defense articles and defense services

(a) Establishment of monitoring program

(1) In general

In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this chapter or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) Requirements of program

To the extent practicable, such program—

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular end-use verification developed under section 2778(g)(7) of this title (commonly referred to as the “Blue Lantern” program); and

(B) shall be designed to provide reasonable assurance that—

(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) Conduct of program

In carrying out the program established under subsection (a), the President shall ensure that the program—

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.